IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 19TH OCTOBER 2006 / 27TH ASWINA 1928

SA.No. 311 of 1994(D)

AS.63/1989 of SUB COURT, HOSDRUG
OS.61/1984 of MUNSIFF COURT, HOSDRUG
.....

APPELLANT:RESPONDENT/DEFENDANT

V.T.V.KUNHIKRISHNAN,
S/O.KANNA PODUVAL,
GOVT.HIGH SCHOOL,
PARAPPA IN KINDANOOR VILLAGE,
HOSDURG TALUK, PARAPPA P.O,
ANANDESHARAM

BY ADV. SRI.T.A.RAMADASAN

RESPONDENT:APPELLANT/PLAINTIFF

P.P.NARAYANAN, S/O.KANNAN,
RESIDING AT WEAVERS STREET,
PILICODE VILLAGE, HOSDURG TALUK,
PILICODE P.O.

BY ADV. SRI.K.G.GOURI SANKAR RAI

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 19/10/2006,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN, J.

==========

S.A. NO. 311/1994

==========

DATED THIS, THE 19TH OCTOBER, 2006.

J U D G M E N T

Defendant in a suit for money is the appellant. The suit was dismissed against which the plaintiff preferred an appeal as A.S. 63/1989. The appellate court, after re-appreciating the evidence on record, found that the plaint claim is proved and accordingly, decreed the suit, reversing the decree and judgment passed by the trial court, against which the present appeal is preferred.

2. As per the plaint averments, an amount of Rs.5,000/- was borrowed by the defendant from the plaintiff, in May, 1981. The plaintiff raised the said amount by pledging gold ornaments in the Padna Service Co-operative Bank Ltd. and paid the above said amount to the defendant who undertook to repay the same with interest and incidental charges shortly. But the defendant did not repay the amount in spite of repeated demands. On 11.10.1981 the defendant sent a letter to the plaintiff promising to repay the amount with interest before 30.10.1981. Since even thereafter, he did not repay the amount, the plaintiff sent a registered letter calling upon him

to repay the amount with interest, which was also in vain. It was in these circumstances, that the suit was filed. The letter dated 11.10.1981 is marked as Ext.A1 in the case.

3. The defendant resisted the suit inter alia contending that he did not approach the plaintiff as alleged in the plaint, that the plaintiff did not raise any amount for him by pledging ornaments nor did he pay the amount as alleged. He also disputed having sent Ext.A1 letter to the plaintiff. However, he admitted the fact that he did not sent any reply because of the illness of his father. He also contended that the interest claimed is excessive and prayed for dismissal of the suit.

4. On the side of the plaintiff, PWs 1 to 3 were examined and Exts.A1 to A9 were marked. On the side of the defendant, DW.1 was examined. Exts. X1 and C1 and C2 were also marked in the case.

5. Ext.A1 along with other documents containing the admitted signature was sent to the Handwriting Expert at the instance of the plaintiff. The Handwriting Expert was also examined as PW.3 in the case. Mainly relying on some of the answers given by the Expert while examined as PW.3, the trial court found that the signature contained in Ext.A1 was not compared and PW.3 is not believable. However, the appellate court found that though Ext.A1 was denied by the defendant, plaintiff produced

Exts.A5 and A6 which are promissory note and loan agreement respectively executed by the defendant and his brother jointly in favour of the North Malabar Gramin Bank, Cheemeni and a comparison of Exts.A1, A5 and A6, will make it clear that the signatures in all those documents were put in by the same person. According to the lower appellate court, the findings of the trial court that PW.3 has not complied with the directions of the court and therefore Ext.A1 is not true and correct is perfectly unsustainable in law. At any rate, the Expert's evidence is only a piece of evidence in the case and as rightly pointed out by the appellate court, the same has to be evaluated in the light of the other evidence in the case. The recitals in Ext.A1 would clearly show that the defendant had agreed to repay the amount before 30.10.1981. It is on such premise that the appellate court reversed the finding of the trial court and decreed the suit with interest at the rate of 15% per annum.

6. The learned counsel for the appellant submitted that the appellate court was wrong in reversing the judgment passed by the trial court. According to him, the evidence of the Expert while examined as PW.3 will prove the fact that he did not compare the signature contained in Ext.A1 with the admitted signature and he also read out the deposition of PW.3 in this regard.

7. I have gone through he evidence on record and perused the judgments rendered by the courts below.

8. On a careful reading of the deposition of PW.3, the Expert, it is seen that he has categorically stated in his examination that except the Malayalam portion in Ext.A1, he has compared the signature in English in the bottom as well as the name written in English on the top of it. He was not familiar with Malayalam and that was why he did not compare the Malayalam writings in Ext.A1 and the name written below the signature at the bottom. Ext.A1 clearly shows that after writing the name in Malayalam the signature is put in English. This signature is compared with the signature contained in the admitted documents and it was also categorically stated by the Expert that the signature tallies with the signature contained in the admitted document. It must also be observed that the suit itself was instituted for an amount of Rs. 5,000/- only and the plaintiff has taken pain to send the document Ext.A1 to Handwriting Expert after incurring expenditure in this regard. If the case of the plaintiff was false, he would not have taken such an attempt and pain to send the document for examination by a Handwriting Expert. Besides, as rightly found by the appellate court, a comparison of the signature contained in Ext.A1 with the admitted documents would clearly shows that the signature contained in

Ext.A1 is similar to the cone contained in the admitted documents. The appellate court having appreciated the entire evidence in the matter and come to the irresistible conclusion that Ext.A1 stands proved and the transaction between the parties as evidenced by Ext.A1 admits the fact that the defendant had borrowed the amount though he had agreed to repay the same before 30.10.1981. The factual aspects found by the court below has not exceeded its jurisdiction nor can it be said that the judgment is perverse.

9. In the realm of appreciation of evidence there is hardly any scope for interference by this court under Section 100 of the Code of Civil Procedure. There is no question of law much less any substantial question of law arises for consideration.

Accordingly, the second appeal is dismissed.

P.R. RAMAN,
(JUDGE)

knc/-

P.R. RAMAN, J.
==========

O.P. NO. 311/1994
==========

J U D G M E N T

19th October, 2006.